

12/1/04

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

COURSE OUTLINE ON FEDERAL
RULES OF BANKRUPTCY PROCEDURE

By
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A. Preliminary Information.

What is the Bankruptcy Court?

28 U.S.C. §151 provides that

"In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the Bankruptcy Court for that district."

The bankruptcy judge is a judicial officer of the district court.

28 U.S.C. §157(a) provides that

"Each district court may provide that any or all cases under Title 11 [the bankruptcy code] and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 shall be referred to the bankruptcy judges for the district."

This reference has been made by the district court. See Local Rule of the U.S. District Court 53(C).

28 U.S.C. §157(b) provides that

"Bankruptcy judges may hear and determine all cases under Title 11 and all core proceedings arising under Title 11 or arising in a case under Title 11 referred under subsection (a) of this section."

Bankruptcy jurisdiction is complex because bankruptcy judges are not Article III judges under the U.S. Constitution and thus have limited powers. However, in this district there are very few fights over jurisdiction of the bankruptcy court because the bankruptcy cases in the bankruptcy court for the District of Rhode Island are usually not large enough to justify time consuming and expensive battles over jurisdiction and because the district court judges prefer to have the bankruptcy judge handle bankruptcy matters. Nevertheless, a challenge to the bankruptcy court's jurisdiction should be considered if an attempt is made by a debtor to sue your client in the bankruptcy court, e.g., with regard to a collection.

What is the Bankruptcy Code?

A lengthy and complicated statute found at 11 USC 101 et. seq., which is divided into chapters, including Chapter 7 - Liquidation, Chapter 11 - Reorganization and Chapter 13 - Adjustment of Debt of an Individual with Regular Income.

What are the bankruptcy rules?

The Federal Rules of Bankruptcy Procedure promulgated by the United States Supreme Court (hereinafter the "FRBP"); there are approximately 240 such rules;

The local rules of the United States Bankruptcy Court for the District of Rhode Island; these rules were extensively revised, effective November 1, 1997, and have been amended several times; there are about 85 such rules, which shall be cited as "R.I.LBR" or simply "LBR" when cited within a local rule. The numbering of each local rule relates to the FRBP on the same topic, e.g., R.I.LBR 1003-1 entitled "Involuntary Petitions" is related to FRBP 1003 entitled "Involuntary Petition". It should be noted that the rules of our local bankruptcy court differ from the local bankruptcy rules in other districts.

Rule 53 entitled "Bankruptcy" of the Local Rules of the U.S. District Court deals with bankruptcy matters.

R.I.LBR 1001-1(b) states that to the extent a procedural matter is not covered by the R.I.LBR or the FRBP,

the Local Rules of the U.S.District Court (D.R.I.) shall apply.

From time to time, the bankruptcy court issues Administrative Orders dealing with minor procedural issues; it is hoped that the revised R.I.LBR will make it unnecessary to issue Administrative Orders.

The bankruptcy rules, federal and local, are supposed to be procedural and "shall not abridge, enlarge or modify any substantive right". The intention is that the substantive provisions are to be found in the Bankruptcy Code, that is, Title 11 of the U.S. Code.

B. The Bankruptcy Rules.

There follows a description of the bankruptcy rules, federal and local, which are most commonly encountered:

Part I: Commencement of Case; Proceedings Relating to Petition.

FRBP 1001. Scope of rules and forms; short title.

The federal bankruptcy rules govern procedure in cases under Title 11; cite as "Federal Rules of Bankruptcy Procedure". They shall be construed "to secure the just, speedy and inexpensive determination of every case."

R.I.LBR 1002-1. Petition- General.

This rule contains practical information which is helpful in preparing to file a bankruptcy petition. Note that a case management/electronic filing system ("CM/ECF") is operative as of March 3, 2003.

FRBP 1003. Involuntary Petition.

The bankruptcy code requires that if the debtor has twelve or more creditors, then at least three creditors must sign the involuntary bankruptcy petition. Note that an entity that has transferred or acquired a claim for the purpose of commencing a liquidation case under Chapter 7 or a reorganization case under Chapter 11 of the bankruptcy code is not a qualified petitioner. It is not easy to find three qualified petitioners who are willing to sign an

involuntary petition, because most businessmen do not want to get involved and do not want to have a reputation as a person who will put a customer into bankruptcy.

R.I.LBR 1003-1. Involuntary Petitions.

Provides that an involuntary petition filed against a corporation, partnership, trust or other nonindividual shall include a designation of the debtor's principal operating officer, trustee, managing general partner or other appropriate authorized agent.

FRBP 1004. Partnership Petition.

FRBP 1004 formerly provided that a voluntary petition could be filed on behalf of the partnership by one or more general partners only if all general partners consented to the petition; this has been amended, effective 12/1/02, to eliminate the provision that all general partners must consent to the filing, inasmuch as the filing requirements are "a matter of substantive law and outside the scope of the rules". Note that R.I.LBR 1004-1 requires that a verified statement or unsworn declaration be filed with a voluntary partnership petition that all general partners consent to and join in the filing of the petition; this will undoubtedly be amended to bring it into line with the FRBP. If a so-called voluntary petition is filed by less than all the general partners, and any of the general partners disagree with the filing, then the petition is treated as an involuntary petition.

R.I.LBR 1005-1. Filing Papers-Requirements.

This rule states requirements such as size of paper, spacing, etc. Each paper filed with the clerk shall include the filer's name, signature, address, telephone number, facsimile number, and if an attorney, the law firm's name, the attorney's state bar identification number, and the name of the client. The rule contains a requirement that many enumerated papers contain language which advises recipients of the time within which a response to the paper must be served and filed with the court.

FRBP 1007. Lists, Schedules, and Statements; Time Limits.

The debtor is required to file schedules of assets and liabilities and a statement of affairs, transfers, etc. These should be filed with the original petition or within fifteen days thereafter; extensions can be obtained for cause. These documents are lengthy and take considerable time and effort to do right. These schedules are signed under penalties of perjury. It is not possible for a layman to understand how to complete these schedules and therefore the debtor's attorney must take responsibility for seeing to it that this work is done correctly.

R.I.LBR 1007-1. Notice of Intent to Dismiss.

This rule contains a procedure by which the court, after issuing a Notice of Missing Documents and Notice of Dismissal If Documents Are Not Timely Filed, and giving the debtor 15 days to file the documents, will dismiss the case automatically without further notice if the debtor fails to timely file certain papers, e.g., schedules. One possibly serious consequence of such dismissal is that there is a 180-day bar to the debtor's refiling her petition.

FRBP 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements.

Having just said that it is important to get the schedules correct, it almost invariably happens that mistakes are made and it is necessary to amend. In general, a voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. Note that R.I.LBR 1009-1 requires that the amendment be filed with a statement of the purpose the amendment is intended to serve and also contains extensive provisions relating to amendments to schedules to add omitted creditors.

FRBP 1014. Dismissal and Change of Venue.

The correct venue for a case is in general the place of residence of the debtor for most of the prior six months. If a petitioner has filed in an improper district, the court may transfer the case to the proper district if the court determines that the transfer is in "the interest of justice or for the convenience of the parties". From time to time, one sees cases of individuals who reside in Seekonk or

Attleboro, but who file in Rhode Island because of the convenience to all parties; such cases are not generally transferred to Massachusetts.

FRBP 1015. Consolidation or Joint Administration of Cases Pending in Same Court.

The important point here is that under this rule cases can be consolidated "administratively", in which the assets and liabilities of the debtors are not consolidated, as opposed to "substantive consolidation", which involves the pooling of assets and liabilities and substantive rights.

FRBP 1017. Dismissal of or Conversion of Case; Suspension.

Once a bankruptcy petition is filed, the case cannot be dismissed by the debtor without notice to all creditors and a hearing. This rule prevents a debtor from making payments to three petitioning creditors in order to get rid of the petition, which would enable the petitioning creditors to collect more than the debtor's other creditors.

R.I.LBR 1017-2. Dismissal For Lack of Prosecution.

The court may, on its own motion, and after notice to the debtor, the debtor's attorney, if any, and to all creditors, dismiss a case for lack of prosecution, including failure to timely file schedules, failure to timely and diligently prosecute the filing of a plan or other document or pleading, failure of a party or counsel to appear, upon notice or order, at a hearing before the court or failure to abide by any court order requiring the filing of papers or payment of fees, costs or sanctions. The cost of mailing the notice, which cost may be significant, will issue against the debtor and counsel, jointly and severally.

FRBP 1019. Conversion of Chapter 11 Reorganization Case or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case.

Sets forth consequences of conversion from an administrative point of view. Proofs of claim actually filed in a superseded Chapter 11 case are deemed filed in the Chapter 7 case pursuant to this rule; however, as a practical matter, claims in many superseded Chapter 11 cases are discarded because the cases appear to be no asset cases. If assets are later discovered, a notice is then sent out notifying creditors to file claims, and in this event it is necessary to file a proof of claim even if a proof of claim was filed in the superseded Chapter 11.

Part II: Notices, Meetings; Examinations; Elections; Attorneys and Accountants.

FRBP 2002. Notices to Creditors, Equity Holders' Security, United States, and United States Trustee

This is an important rule on notices. Generally speaking, twenty days prior notice must be sent of several significant events in a bankruptcy case, including (1) the Section 341 meeting (the §341 meeting is a meeting of creditors convened by the US Trustee pursuant to 11 USC 341 to examine the debtor and elect a trustee), (2) the proposed use, sale or lease of property, (3) hearing on compromise, (4) hearing on conversion or dismissal, (5) hearing on compensation, (6) time fixed for filing claims in Chapter 11.

Twenty-five days prior notice must be given of hearing on a disclosure statement or the confirmation of a plan. Also the court can enter an order for notice, particularly where there are special circumstances; for example, notice may be made by publication where there are certain classes of creditors whose names and addresses are unknown, or a notice may be by publication where the class contains numerous creditors with very, very small claims making notice prohibitively expensive. R.I.LBR 2002-1 provides that the clerk is authorized to designate the persons who shall provide notice to creditors and parties in interest, and also defines "parties in interest".

FRBP 2003. Meeting of Creditors or Equity Securityholders.

This rule governs the time of the Section 341 meeting, the order of meeting, the election of a trustee, and the right to vote. The Section 341 meeting is presided over by a representative of the United States Trustee in a

Chapter 11 case or in a Chapter 7 case, by one of the panel trustees in bankruptcy.

FRBP 2004. Examination

This is an important rule on examinations and is basically a very powerful discovery tool. On motion of any party in interest, the court may order the examination of any entity. The scope of the examination is anything relating to the debtor, to the debtor's financial condition, any matter relating to the case or to the formulation of a plan and any matter which may affect the administration of the case. In essence, it is a fishing expedition. Fed.R.Civ.P. 45 applies so that the examining party may use a subpoena to compel attendance of witnesses and/or production of materials. Note however that R.I.LBR 2004-1 requires that before the filing of a motion for examination under FRBP 2004, counsel for the moving party shall confer with counsel for the proposed examinee(s), or with the proposed examinee, if unrepresented, to arrange a mutually agreeable date, place and time for the examination. R.I.LBR 2004-1 also provides that not less than thirteen days notice of a proposed examination must be given, and that discovery in pending adversary proceedings and contested matters shall be pursuant to the discovery provisions in Part VII of the FRBP.

FRBP 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination.

It is possible to get a special order to compel the debtor to appear for examination.

FRBP 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases.

Solicitation of proxies by an attorney is prohibited. A proxy is a power of attorney authorizing the proxy to vote a creditor's claim. The problem addressed here was the old practice of certain attorneys, who were motivated by reasons of personal gain, soliciting and obtaining a number of proxies and have themselves elected trustee of cases with significant assets.

FRBP 2014. Employment of Professional Persons.

This rule provides the procedure for application for employment of an attorney, accountant or other professional and for an order of the court approving same. Note that such professional will receive payment from the estate only if employment is authorized by the court. R.I.LBR 2014-1(c) provides that an application to employ a professional is timely if it is filed within 30 days of the later of the bankruptcy or the first date of service by the professional. Absent extraordinary circumstances, the court will not approve nunc pro tunc applications to employ professionals. There have been cases where professionals have performed extremely valuable services to the bankruptcy estate but have been denied all compensation from the estate because their employment was not authorized. Note that R.I.LBR 2014 provides that the person to be employed must file a verified statement which states whether such person is "disinterested" within the meaning of 11 USC 101, and that all compensation may be denied where the court determines that the professional person is not "disinterested" or has an actual conflict of interest; further that an "actual conflict of interest will be presumed to exist, subject to rebuttal, where an attorney seeks to represent a debtor and its principal(s) or other insiders.

FRBP 2015. Duty to Keep Records, Make Reports, and Give Notice of Case.

The trustee or debtor in possession has the duty to keep certain records and make certain reports, for example, to pay payroll taxes, to give notice of the case to banks of account, and if real estate is involved, to file a notice of bankruptcy in the real estate records. Note that R.I.LBR 2015-3 requires the trustee and the debtor in possession to file with the U.S.Trustee a detailed listing of all assets of the debtor and that R.I.LBR 2015-5 requires a Chapter 13 business debtor to file profit and loss statements, quarterly income and expense statements and evidence of insurance.

FRBP 2016. Compensation for Services Rendered and Reimbursement of Expenses.

Professionals seeking compensation from the estate for services rendered must file a detailed statement specifying the date each task was performed, the name of the individual performing the task, the description of the task, the amount of time it took (calculated to tenths of an hour, e.g., 0.6 hours for a particular task on a particular day), the hourly rate for each professional, associate or assistant, and so forth. See R.I.LBR 2016-1. Accurate time records are essential as are accurate records with regard to expenses. The bankruptcy court has gradually, on a case by case basis, been clarifying what it will and will not accept with regard to reimbursement for services and expenses. Appendix III to the R.I.LBR is the Rhode Island Standard Expense List. R.I.LBR 2016-1(g) requires that retainer funds be deposited in a segregated, federally-insured, interest-bearing account, and provides for a motion by the professional for authority to draw down such funds, as to which the court will usually order a percentage "holdback"; the court retains authority to review all fees and to order disgorgement of fees. Furthermore, every attorney for the debtor must file with the bankruptcy court a statement of compensation paid or agreed to be paid, including the source of the compensation. Under R.I. LBR 2016-2, counsel for the debtor has a continuing duty to timely update the Rule 2016(b) statement if additional fees are incurred after the initial statement. The court may sua sponte deny compensation if the professional fails to comply with the provisions of the Bankruptcy Code, the FRBP and the R.I.LBR regarding compensation.

FRBP 2017. Examination of Debtor's Transactions with Debtor's Attorney.

The court can decide whether any payment to debtor's attorney is excessive. R.I.LBR 2017-1 requires that an attorney for a Chapter 7 or 13 debtor must file an application for compensation when the attorney charges a fee in excess of certain limits set forth in Appendix IV to the R.I.LBR; those limits are currently \$1,000 for the fee charged by the attorney for a Chapter 7 debtor and \$2,500 for the fee charged by the attorney for a Chapter 13 debtor.

Part III: Claims and Distribution to Creditors and Equity Interest Holders; Plans.

FRBP 3001. Proof of Claim.

There is an official form for a proof of claim. If an attorney for a creditor wants his name on the dividend check or wants to receive the check from the trustee, such attorney must file a power of attorney executed by the creditor with the claim. See FRBP 3009. A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. There is another important aspect to filing a proof of claim: filing the proof of claim is treated as a submission by the claimant to the jurisdiction of the bankruptcy court. If the case is a no asset case, a claimant who may be vulnerable to a claim by the debtor against the claimant should not file a proof of claim.

FRBP 3002. Filing Proof of Claim or Interest with the clerk of the bankruptcy court.

In a Chapter 7 or Chapter 13, the proof of claim must be filed within 90 days after the first date set for the Section 341 meeting.

R.I. LBR 3002-1. Filing Proof of Claim or Interest.

This rule requires that a claimant who files a proof of claim with the bankruptcy court clerk shall also serve a copy of the claim on the trustee and the debtor's attorney (or the debtor if the debtor is pro se).

FRBP 3003. Filing Proof of Claim or Equity Security Interest in Chapter 11 Reorganization Cases.

In a Chapter 11, the schedules filed by the debtor are prima facie evidence of validity and amount of a claim unless such claim is listed as disputed, contingent, or unliquidated. Therefore, if a claim is listed and the creditor feels the amount is correct and the claim is not listed as disputed, contingent or liquidated, the creditor does not have to file a proof of claim. FRBP 3003 says that the time for filing a proof of claim in a Chapter 11 will be set by the court, and often in other districts this is done on

a case by case basis. In this district, the bankruptcy court by R.I.LBR 3003-1 has provided that a creditor who wants to file a proof of claim in a Chapter 11 must file on or before 60 days from the date first set for the Section 341 meeting. It should be noted that these bar dates for filing proofs of claim are easy to miss and that it is very, very difficult to obtain permission to file a proof of claim out of time. Be very careful to file proofs of claim on time.

FRBP 3005. Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or other Co-Debtor

A guarantor, surety, indorser or other co-debtor is permitted to file a proof of claim if the creditor has not.

FRBP 3007. Objections to Claims.

The objection must be in writing and filed with the bankruptcy court and mailed to the claimant, the debtor and the trustee. The practice in the bankruptcy court under R.I.LBR 3007-1 is to mail out an objection, to which the claimant must file a response and memorandum within ten days after service (plus three days pursuant to FRBP 9006 if service was by mail); if no response is filed, then the objection will be sustained; therefore be alert to file a response in a timely manner.

FRBP 3012. Valuation of Security.

Provides for a motion by any party in interest for valuation of a secured claim. Under the Bankruptcy Code a claim is secured only up to the value of the collateral securing the claim and is unsecured for the balance. This can have important consequences, particularly in Chapter 11. R.I.LBR 3012-1 provides that any party intending to rely on an appraisal at a hearing on valuation must provide copies of the appraisal to the other parties.

FRBP 3013. Classification of Claims and Interests.

On motion by any party in interest, the court may classify claims and interests for the purposes of a Chapter 11 plan. This is extremely important in a Chapter 11

case, particularly in single asset cases where real estate it is the key to the success or failure of a plan.

FRBP 3015. Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 13 Individual's Debt Adjustment Case.

A Chapter 13 debtor may file a Chapter 13 plan with the Chapter 13 petition or within 15 days thereafter. R.I.LBR 3015-1 provides that if the Chapter 13 plan is not filed with the Chapter 13 petition, then within 24 hours of the filing of the petition, the debtor's attorney must serve a copy of the proposed Chapter 13 plan on all creditors. Objections to confirmation of a Chapter 13 plan must be filed and served before confirmation of the plan. This is important in view of the fact that Chapter 13's are more popular since the qualifications for Chapter 13 were liberalized, i.e., unsecured debts of less than \$307,675 and secured debts of less than \$922,975.

R.I.LBR 3015-3. Chapter 13 - Confirmation.

Any objection to confirmation of a Chapter 13 plan shall be filed no later than seven days before the hearing date on confirmation. At least 48 hours prior to the hearing on confirmation, the debtor's attorney, the debtor (if pro se), and any objector are required to confer with the Chapter 13 trustee regarding the proposed plan, its feasibility and permissibility, and any objections to the plan.

FRBP 3017. Court Consideration of Disclosure Statement in Chapter 11 Reorganization Cases.

This provides for a hearing on the disclosure statement filed with respect of a Chapter 11 plan.

It is possible to make objections to the plan at the time of the disclosure statement hearing on the ground that a plan is simply not confirmable. This gives an objector ability to save time and expense by joining the battle at the disclosure statement hearing rather than having to wait for the confirmation hearing.

FRBP 3018. Acceptance or Rejection of Plan in the Chapter 11 Reorganization Case.

The court has power to nullify abusive procedures relating to solicitation of acceptances or rejections of a plan of reorganization.

FRBP 3020. Deposit; Confirmation of Plan in a Chapter 11.

The bankruptcy court has the power to require a deposit of money needed for confirmation of a plan.

In this district, R.I.LBR 3020-1(b) provides that the plan proponent must file proof of the required deposit with the clerk of the court at least three days prior to the confirmation hearing. R.I.LBR 3020-1(a) requires the plan proponent to supply, at least seven days prior to the confirmation hearing, to the clerk and the local office of the U.S.Trustee extensive documentation relating to the plan and confirmation.

Part IV: Debtor: Duties and Benefits.

FRBP 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements.

(a) Relief from automatic stay is sought by a motion which gives rise to a "contested matter". R.I.LBR 4001-1 requires that a movant seeking relief from stay to foreclose must state the basis for entitlement to relief must be stated with particularity, specifying, inter alia, the amount of the movant's claim, all liens on the collateral and the value of the collateral. If value is at issue, the respondent shall set forth its position concerning value (see R.I.LBR 3012-1 regarding providing appraisals to other parties). R.I.LBR 4001-1(j) sets forth a procedure as to pretrial orders in relief from stay litigation; for example, if "adequate protection" is at issue, the respondent shall explain the character of any adequate protection offered in lieu of relief from stay; if the issue of whether the collateral is necessary to an effective reorganization is in dispute, the debtor must state whether a reorganization plan is in prospect and, to the extent possible, provide a summary of the plan expected to be filed. The automatic stay expires 30 days after the final hearing on the motion has commenced unless the court denies relief or, after notice and a hearing,

orders the stay continued pending conclusion of the final hearing. FRBP 4001 requires that the court must have a hearing within thirty days after the motion for relief is filed, but this may be a preliminary hearing. The hearing on the motion for relief from stay must be concluded within 30 days unless it is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances. In other words, it is possible through a combination of FRBP 4001 and the Bankruptcy Code to compel the court to make a decision on relief from stay rather than take the matter under advisement for a prolonged period. Of course if the bankruptcy court feels that the movant is pushing the court too hard, the movant may not get the decision she would like to get.

(b) Section 363 of the Bankruptcy Code provides that cash collateral cannot be used by a debtor-in-possession without the consent of the secured party or an order of the court after notice and a hearing. FRBP 4001 provides the procedure for the filing of a motion for use of cash collateral by the debtor. The court can hold an emergency preliminary hearing and authorize use of cash collateral of only that amount of cash as is necessary to avoid immediate and irreparable harm to the estate, with a final hearing to be held not less than 15 days from the filing of the motion. This situation arises in Chapter 11's where the debtor finds it necessary to use cash collateral to meet payroll and/or to buy supplies at the beginning of the Chapter 11 case.

(c) FRBP 4001 provides for a motion to obtain credit (i.e., a so-called "financing order"). Such financing orders are often worked out by the debtor and the debtor's secured lender prior to the filing of the Chapter 11. The rule provides that if no creditors' committee exists, then notice of the motion must be sent to the 20 largest creditors.

(d) It is possible for a debtor-in-possession and a secured party to make an agreement providing for relief from stay, use of cash collateral and/or obtaining credit; under this procedure, a motion is made for approval of the agreement, the motion is served on the creditors' committee or if none, on the 20 largest creditors, there is a 15-day objection period, and if no objection is filed, the court can grant the relief without a hearing. This procedure is somewhat faster than the procedure where there is no agreement.

FRBP 4002. Duties of Debtor.

The debtor must attend the Section 341 meeting for examination and also must inform the trustee of any real estate or personal property owned by the debtor and held by another. R.I.LBR 4002-1 has several important provisions: (a) the debtor shall hold and manage debtor's assets as fiduciary for the estate; (b) the debtor shall take all steps reasonably necessary to prevent any significant depletion of the assets of the estate and shall advise the court immediately of any significant depletion or anticipated depletion of assets of the estate; and (c) if, at any time during the pendency of the case, the debtor becomes aware of facts indicating that the continued operation of its business is not in the best interest of the creditors or of the estate, the debtor and/or counsel shall immediately advise the court.

In other words, the primary duty of counsel to a Chapter 11 debtor in possession is to the estate, not to the officers of the DIP.

FRBP 4003. Exemptions.

The debtor must list property which the debtor claims as exempt on his schedule of assets and must specify the exact statutory basis for each item (see R.I.LBR 4003-1). The trustee or a creditor then has 30 days after the end of the Section 341 meeting to file an objection, and the objector has the burden of proof. It is extremely important if you represent a creditor to be sure to review the exemptions claimed by the debtor, as they may be improperly large and the time for objecting is short.

FRBP 4004. Grant or Denial of Discharge.

This rule deals not with the discharge of a single debt but with a denial of a discharge as to all debts of the debtor. In Chapter 7 a complaint objecting to the debtor's discharge under Section 727(a) of the Bankruptcy Code must be filed not later than 60 days after the first date set for the Section 341 meeting.

FRBP 4005. Burden of Proof in Objecting to Discharge.

The burden of proof is on the objector.

FRBP 4007. Determination of Dischargability
of a Debt.

This deals with the determination of dischargability of a single debt rather than of all debts of the debtor. This rule would apply in a case where a single creditor who is owed a single debt by the debtor feels, for example, that he has been defrauded and wants to deny the debtor a discharge with regard to the particular debt. In Chapter 7 and Chapter 11, a complaint under Section 523(c) of the Code must be filed not later than 60 days following the first date for the Section 341 meeting. This matter is an "adversary proceeding", meaning it is more like a normal trial and conducted under most of the federal rules of civil procedure. Creditors quite often have objections to the discharge of the debt owed to them and it is necessary to be careful to meet the rather short time limits set forth in this rule.

R.I.LBR 4008-1. Reaffirmation.

The court is very concerned about inappropriate reaffirmation agreements. This rule provides that the court will independently review all reaffirmation agreements not involving real property. In the situation where debtor's counsel has signed an affidavit that the agreement will not impose an undue hardship on the debtor, but it appears to the court that the debtor is not financially capable of honoring the reaffirmation agreement, the court will issue an order to show cause against the debtor and debtor's counsel why the affidavit should not be stricken.

Part V: Court and Clerks.

FRBP 5001. Courts and Clerks Offices.

The bankruptcy court is always open, theoretically. See R.I.LBR 5001-2 for the hours of the clerk's office. The court will accept filings outside the regular hours in emergency situations.

R.I. LBR 5005-4. Electronic Filing.

Documents may be filed electronically pursuant to the bankruptcy court's CM/ECF system, effective March 3, 2003.

FRBP 5011. Withdrawal and Abstention from Hearing a Proceeding.

This is a motion for withdrawal or abstention to be heard by the district court judge and to be decided according to the "interest of justice" per 28 U.S.C. §1334(c). Such motions are rare, but might be useful to a party who wanted to contest jurisdiction. Note also the provisions of Section 305 of the Bankruptcy Code which permit the bankruptcy court to dismiss a case if doing so is in the interest of creditors.

Part VI: Collection and Liquidation of Estate.

FRBP 6004. Use, Sale, or Lease of Property.

Subsection (a) permits a debtor or trustee to use, sell or lease property (not cash collateral) not in the ordinary course of business by giving notice to interested parties; if no objection is filed then the transaction proceeds without an order of the court. Title companies do not like this procedure but most have learned to live with it.

If an objection is filed to the notice, then a court hearing is held and the matter is considered a "contested matter".

Subsection (c) permits the sale of assets of the estate free and clear of liens, but a motion for authority must be filed and a party can object giving rise to a "contested matter".

Subsection (f) provides that on completion of a sale, an itemized statement of the property sold, the buyer, and the price paid, shall be filed with the bankruptcy court.

FRBP 6005. Appraisers and Auctioneers.

This rule provides that the order of the bankruptcy court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. R.I.LBR 6005-1 has detailed provisions concerning auctioneers

and sets fees for auctioneers, which the auctioneers regard as low. In all events, the bankruptcy court in this district reserves its power to regulate and approve or disapprove fees, and will not approve fees in advance.

FRBP 6006. Assumption, Rejection, and Assignment of Executory Contracts and Unexpired Leases.

Subsection (b) provides for a motion by any party to make a debtor-in-possession or trustee assume or reject an executory contract. An example would be where a lessor wants to know whether a tenant in Chapter 11 is going to assume or reject the lease. In our local bankruptcy court, the judge normally grants extensions to the debtor of the time period within which the debtor must assume or reject and customarily denies motions by parties seeking to make the debtor-in-possession or trustee assume or reject.

FRBP 6007. Abandonment or Disposition of Property.

This Rule provides for abandonment of property through a notice by the debtor-in-possession or trustee to all creditors. R.I.LBR 6007-1 provides for limited notice if the value of the property is less than \$5,000. In addition, a party in interest can file a motion requesting abandonment. An example might be a situation where there is no equity for the debtor in an asset because of the lien of the secured party and so the debtor or the secured party files a motion requesting abandonment. An issue that has been hard fought is whether a debtor can abandon property which has so many environmental problems that it is worthless, ridding the estate of the administrative problem of dealing with the environmentally contaminated property.

FRBP 6009. Prosecution and Defense of Proceedings by Trustee or Debtor-In-Possession.

The trustee or debtor-in-possession may prosecute or defend any pending action by or against the debtor or commence and prosecute any action or proceeding on behalf of the estate before any tribunal, with or without court approval. This contrasts with the receivership practice where a receiver normally will obtain authority of the receivership court before bringing any significant lawsuit.

Part VII: Adversary Proceedings.

FRBP 7001. Scope of Rules of Part VII.

An "adversary proceeding" is a proceeding (i) to recover money or property, (ii) to determine the validity, priority or extent of a lien or other interest in property, (iii) to object to or revoke a discharge, (iv) to determine the dischargability of a debt, (v) to obtain an injunction or other equitable relief, (vi) to subordinate a claim. An adversary proceeding is like a trial in the U.S. district court, in that the rules in Part VII applicable to adversary proceedings are basically copies of the Federal Rules of Civil Procedure with certain changes designed to tailor the rules to the bankruptcy setting. A "contested matter" under Rule 9014 provides for the use of some of the adversary proceeding rules (e.g. discovery) but not others (e.g. pleadings); it is contemplated that a "contested matter" will proceed faster than an adversary proceeding.

FRBP 7004. Process; service of summons, complaint.

This rule provides for nationwide service of process by mail as to adversary proceedings in the bankruptcy court.

R.I.LBR 7008-1. Jury Trials.

It is possible to have a jury trial in the bankruptcy court. This rule sets forth some of the procedural requirements.

R.I.LBR 7016-1. Pretrial Procedure; Formulating Issues.

Unless otherwise ordered or unless an affirmative request is made by a party, the Court will not conduct a scheduling hearing or pretrial conference in an adversary proceeding. A scheduling order will issue from the

Court within 45 days after the defendant's appearance. A joint pretrial order must be filed within the time prescribed by the Court in the scheduling order.

R.I.LBR 7026-1. Discovery-General.

Unless otherwise ordered, the disclosure requirements under FRBP 7026 apply to all in adversary proceedings in the Bankruptcy Court.

Part VIII: Appeals to District Court or Bankruptcy Appellate Panel.

FRBP 8001. Manner of Taking Appeal, Voluntary Dismissal.

An appeal as of right from a final judgment, order or decree of a bankruptcy judge to a district court or bankruptcy appellate panel (the "BAP") is taken by filing a notice of appeal within 10 days. An appeal from an interlocutory judgment, order or decree of a bankruptcy judge may be taken by leave by filing a notice of appeal and motion for leave to appeal within ten days. The First Circuit has a bankruptcy appellate panel; reference should be made to the BAP's local rules, which became effective November 3, 1997, and which provide that bankruptcy appeals will be heard by the BAP unless one of the parties "opts out" and requests that the appeal be heard by the U.S. District Court. The appellant must file a statement to opt out at the same time the notice of appeal is filed. The appellee has thirty days after service of the notice of appeal to file a statement to opt out, but the appellee waives the right to opt out if it files any pleading in the appeal without opting out at the same time.

FRBP 8002. Time For Filing Notice of Appeal.

The notice of appeal shall be filed with the clerk within ten days of the date of the entry of the judgment, order or decree appealed from. There is also a local practice involving motions for reconsideration, which appear to be motions under FRBP 7052(b) to amend the judgment; if

timely filed, the time for appeal runs from the entry of the order on such motion.

FRBP 8005. Stay Pending Appeal

A motion for a stay must be made to the bankruptcy judge in the first instance. The court may condition a stay on the posting of a bond. Obtaining a stay is often important because appeals from certain orders may be moot if not stayed (e.g. the appeal from an order approving sale of assets of a bankrupt or the obtaining of credit by the debtor).

FRBP 8006. Record and Issues on Appeal

Within ten days after filing the notice of appeal, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. See Local Rule of US District Court 53(E) regarding district court review of bankruptcy court orders.

Part IX: General provisions.

FRBP 9001. General Definitions.

"Trustee" includes the debtor-in-possession in a Chapter 11 case. This is necessary because the Bankruptcy Code gives a debtor-in-possession many of the powers of a bankruptcy trustee, e.g., the power to avoid preferences.

FRBP 9002. Meanings of words in the Federal Rules of Civil Procedure.

This rule tailors the meaning of certain words in the FRCP to proceedings in the bankruptcy court (e.g. "judgment" includes any order appealable to an appellate court).

FRBP 9003. Prohibition of Ex-Parte Contacts.

Any party in interest and any attorney of a party in interest shall refrain from ex-parte meetings and communications with the court concerning matters affecting a particular case or proceeding. R.I.LBR 9003-1 provides that

any correspondence to the bankruptcy judge shall be served on all interested parties, with evidence thereof provided to the court.

FRBP 9006. Time.

Provides the rules for computation of time limits. Enlargement or reduction of time limits for cause is permitted with certain enumerated exceptions.

FRBP 9007. General Authority to Regulate Notices.

The court may designate, if not otherwise specified in the rules, the time within which, the entities to whom, and the form and manner in which notice shall be given.

FRBP 9010. Representations and Appearances; Powers of Attorney.

This rule requires that an attorney appearing for a party in a case shall file with the court a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record. However, R.I.LBR 1005-1(d) appears to require also the attorney's facsimile number, state bar identification number and the name of client. R.I. LBR 9010-1(a) provides that an attorney who is in good standing of the bar of the Supreme Court of Rhode Island and is admitted to practice in the U.S. District Court (D.R.I.) shall be deemed admitted to practice in the bankruptcy court (D.R.I.).

R.I.LBR 9010-1(e)(2) provides a procedure by which an attorney may file a request to be served with copies of filed papers that deal directly with his client; if the attorney wants to request that he be served with all papers filed in the case, he must file a formal entry of appearance and give notice of such request.

FRBP 9011. Signing and Verification of Papers.

This is similar to FRCP-11. Every petition, pleading, motion and other papers served or filed on behalf of a party represented by an attorney, except a list, schedule or statement, shall be signed by a least one attorney of record and the attorney's individual name, office address and

telephone number shall be stated. The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of a case. Sanctions on an attorney or client for violation of this rule include reasonable expenses caused by the improper filing including reasonable attorney's fees.

FRBP 9013: Motions: Form and Service

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. See also R.I.LBR 9013-1, which provides that most motions must be accompanied by a memorandum citing relevant statutory sections, and R.I.LBR 9013-2 and 9013-3, which have extensive provisions governing motion practice.

FRBP 9014: Contested Matters.

In a contested matter, relief shall be requested by motion. The rule provides for the application of a number of the Part VII rules, but in general contemplates a proceeding that will move much faster than, and will not have all the procedural formalities of, an adversary proceeding. See R.I.LBR 9014-1 which provides for the requirement by the court of a joint pretrial order and provides that counsel shall confer in a good faith effort to resolve the dispute prior to any evidentiary hearing.

FRBP 9016: Subpoena.

Simply provides that Rule 45 of FRCP applies in cases under the bankruptcy code.

FRBP 9017: Evidence.

The Federal Rules of Evidence apply in cases under the Bankruptcy Code.

R.I.LBR 9019-1. Stipulations.

All stipulations affecting a case or proceeding, except stipulations made in open court and recorded, shall be in writing, signed by all affected parties and filed with the court. No stipulations shall have the effect of relieving a party from a prior order of the court, including a scheduling order, unless the stipulation is approved by the court in writing.

FRBP 9020: Contempt Proceedings.

Contempt in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge.

FRBP 9027: Removal.

Cases can be removed from the state court or federal district court to the bankruptcy court. The time periods to file a notice of removal are very short (as few as 30 days), so it is important to focus right away on this issue.